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LAW DEPARTMENT

NOTIFICATION

The 2nd March, 2007

No. 2699-Legis.—The following Ordinance promulgated by the Governor of Orissa on the 2nd March, 2007 is hereby published for general information.

ORISSA ORDINANCE No. 1 OF 2007

THE ORISSA PROFESSIONAL EDUCATIONAL INSTITUTIONS (REGULATION OF
ADMISSION AND FIXATION OF FEE) ORDINANCE, 2007

AN

ORDINANCE

TO PROVIDE FOR THE REGULATION OF ADMISSION, FIXATION OF FEE,
PROHIBITION OF CAPITATION FEE, RESERVATION IN ADMISSION
AND FOR OTHER MEASURES TO ENSURE EQUITY AND
EXCELLENCE IN PROFESSIONAL EDUCATIONAL
INSTITUTIONS AND FOR MATTERS
CONNECTED THEREWITH OR
INCIDENTAL THERETO.

Whereas the Hon'ble Supreme Court in its judgement in P.A. Inamdar and others Vrs. State of Maharashtra reported in AIR 2005 SC 3226 has held that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admission by providing a centralized and single window procedure which to a large extent, can secure grant of merit based admission on a transparent basis ;

And whereas, the Hon'ble Supreme Court in its judgement in Islamic Academy of Education and others Vrs. State of Karnataka reported in AIR 2003 SC 3724 and in P.A. Inamdar case has held that every institution is free to devise its own fee structure but the same can be regulated to prevent profiteering ;

And whereas, it is further held that no capitation fee can be charged directly or indirectly or in any form and if charging of capitation fee and profiteering is to be checked, the method of admission is to be regulated so that the admissions are based on merit and transparency and the students are not exploited ;

And whereas, the Hon'ble Supreme Court in Islamic Academy case has held that two committees for monitoring admission procedure and determining fee structure in professional educational institutions are permissible as regulatory measures aimed at protecting the interest of the student community as a whole and in maintaining required standards of professional education on non-exploitative terms in such institutions;

And whereas, in the Constitution (Ninety-third Amendment) Act, 2005 a provision has been made as clause (5) to article 15 of the Constitution as follows :—

“(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19, shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30” ;

And whereas, the Hon'ble Supreme Court in P.A. Inamdar case has observed that it is for the Central Government or for the State Governments, in absence of a central legislation, to come out with a detailed thought out legislation on the subject, which is long awaited ;

And whereas, the Legislature of the State of Orissa is not in session;

And whereas, the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action for the regulation of admission, fixation of fee, prohibition of capitation fee, reservation in admission and other measures to ensure equity and excellence in professional educational institutions in the State in the manner hereinafter appearing;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Orissa is pleased to promulgate the following Ordinance in the Fifty-eighth Year of the Republic of India :—

Short title,
extent,
commence-
ment and
applicability.

1. (1). This Ordinance may be called the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Ordinance, 2007.

(2) It extends to the whole of the State of Orissa.

(3) It shall come into force at once.

(4) The provisions of this Ordinance shall not be applicable to a Private Professional Educational Institution which is established by a special enactment of the Legislature of the State of Orissa.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) “academic year” means the period of twelve months commencing on the 1st day of June every year ;

(b) “approved intake” means and implies the total number of seats sanctioned by the competent statutory authority for admitting students in each course of study in a professional educational institution ;

(c) “BPUT” mean Biju Patnaik University of Technology established by the Biju Patnaik University of Technology Act, 2002; Orissa Act 9 of 2002.

(d) “capitation fee” means any amount, by whatever nomenclature it be called, whether in cash or in kind, paid or collected or received directly or indirectly from the students in addition to the fee determined under this Ordinance;

(e) “fee” means all fees including tuition fee and development fee fixed by the Fee Structure Committee subject to approval of the Government ;

(f) “Fee Structure Committee” means the Committee constituted under section 6;

(g) “free ship” means full or partial remission of fee awarded to students belonging to economically weaker section as the Government may decide, from time to time, on merit cum-means basis;

(h) “general category ” means class of persons belonging to any category other than the reserved category;

(i) “Government” means Government of Orissa ;

(j) “Government institution” means professional educational institution established and managed by Government ;

(k) “Joint Entrance Examination (JEE)” means entrance test conducted by the Policy Planning Body for all professional educational institutions, for determination of merit of the

candidates followed by centralized counseling for the purpose of admission to such institutions through a single window system;

- (l) “lateral entry” means admission of students in 2nd year of the course against seats which will be ten per centum of the approved intake of the first year of such course as per the guidelines of the All India Council for Technical Education;
- (m) “management” means any person or body by whatever name called managing and controlling the affairs of a private professional educational institution;
- (n) “minority” for the purpose of this Ordinance, means a community belonging to a religious or linguistic minority as may be notified by the Government;
- (o) “minority institution” means private professional educational institution established and administered by minority;
- (p) “Non Resident Indians (NRI)” means children or wards of a person of Indian origin residing outside India;
- (q) “Policy Planning Body” means a body constituted under section 4;
- (r) “prescribed” means prescribed by rules made under this Ordinance ;
- (s) “private professional educational institution” means professional educational institution which is not established and managed by Government, Union Government or Government of any other State;
- (t) “Professional Education Fund” means the Fund constituted under section 12 ;
- (u) “professional educational institution” means college or school or an institute, by whatever name called, imparting professional education or conducting professional educational courses leading to the award of a degree, diploma or a certificate by whatever name called, approved or recognized by the

competent statutory body or affiliated to a University, in any of the following disciplines, namely :—

- (i) Bachelor of Science Engineering, Bachelor of Engineering, Bachelor of Technology and Bachelor of Architecture ;
 - (ii) Master in Computer Application ;
 - (iii) Bachelor of Medicine and Bachelor of Surgery (MBBS) ;
 - (iv) Bachelor of Dental Surgery (BDS) ;
 - (v) Bachelor of Pharmacy ;
 - (vi) Bachelor in Hotel Management and Catering Technology ;
 - (vii) Master in Business Administration ; and
 - (viii) any other educational courses as may be declared by Government, by notification, from time to time.
- (v) “qualifying examination” means the examination as may be determined by the Policy Planning Body as qualifying for the purpose of appearing JEE;
- (w) “reserved category” in relation to reservation of seats in private professional educational institution other than the minority institution means class of persons belonging to Scheduled Castes, Scheduled Tribes and SEBC and includes such other class declared in accordance with the reservation policy of Government notified from time to time;
- (x) “Scheduled Castes and Scheduled Tribes” means such Castes and Tribes as notified by the President of India respectively under articles 341 and 342 of the Constitution of India ;
- (y) “S.E.B.C.” means Socially and Educationally Backward Classes of citizens other than the Scheduled Castes and Scheduled Tribes as may be specified by the Government from time to time ;

- (z) “single window system” means the centralized system for admission administered by the Policy Planning Body ;
- (za) “Sponsored Institution” means a professional educational institution set up by the Government under the Societies Registration Act, 1860, the Constituent College 21 of 1860. of University, and department of a University, which runs either with the Government sponsored programme or with the self-financing programme or with both ;

Explanation—The expression ‘Government sponsored programme’ means the course of study for which financial assistance is being provided by the Government; and

- (zb) “University “ means a University established or incorporated by an Act of the legislature of the State of Orissa.

Method of admission in professional educational institutions.

3. Subject to the provisions of this Ordinance, admission of students in all private professional educational institutions, Government institutions and sponsored institutions to all seats including lateral entry seats, shall be made through JEE conducted by the Policy Planning Body followed by centralized counseling in order of merit, in accordance with such procedure as recommended by the said body and approved by the Government.

Composition and functions of the Policy Planning Body.

4. (1) The Government shall constitute a body to be known as the Policy Planning Body consisting of following members nominated by it, namely :—

- (a) The Secretary to Government,
Industries Department,
who shall be the Chairperson ;
- (b) The Secretary to Government,
Health and Family Welfare Department ;
- (c) The Secretary to Government,
Higher Education Department ;
- (d) Vice – Chancellor, BPUT ;

- (e) A person having experience in administering admission and examination of a joint entrance in professional education ;
- (f) Director, Medical Education and Training, Orissa ; and
- (g) Director, Technical Education and Training, Orissa who shall be the Member-Secretary.

(2) The Chairperson of the Policy Planning Body shall have the power to co-opt two persons having experience in the field of health, education or administration, to the body.

(3) The terms and conditions of service of the members of the Policy Planning Body shall be such as may be prescribed.

(4) No person who is associated with any private professional educational institution shall be eligible for being a member of the Policy Planning Body.

(5) A member of the Policy Planning Body shall be removed if he does any act which, in the opinion of the Government, is unbecoming of a member of such body and the member so removed, shall not be re-nominated to the body :

Provided that no such member shall be removed from the body without being given an opportunity of being heard.

(6) The Policy Planning Body shall perform the following functions, namely :—

- (a) regulate the admission ;
- (b) formulate policy guidelines for holding JEE ;
- (c) constitute one or more sub-committees for efficient discharge of its functions in the matter of examination and admission ;
- (d) formulate and recommend the reservation policy to Government for approval, which shall be with regard to reservation of seats in favour of Scheduled Castes, Scheduled Tribes, SEBC, green card holders, Ex-serviceman, sportsperson and physically handicapped persons ;

- (e) determine the eligibility criteria and qualifying examination required for admission ; and
- (f) perform such other functions as may be prescribed.

(7) The Policy Planning Body shall supervise and guide the entire process of admission of students to the Government Institutions, private professional educational institutions and sponsored institutions with a view to ensuring that the process is fair, transparent, merit-based and non-exploitative.

(8) The Policy Planning Body may hear complaints with regard to admission in contravention of the provisions of this Ordinance or rules or orders or guidelines made thereunder and if the Policy Planning Body after making enquiry, in the manner prescribed, finds that there has been any such contravention in admission on the part of any private professional educational institutions, it shall make appropriate recommendations to the Government for imposing fine on such institutions and the Government may on receipt of such recommendation, impose fine not exceeding rupees ten lakhs on such institutions in case of each such contravention.

(9) The Government shall collect the fine along with the interest thereon in such manner and subject to such conditions as may be prescribed.

(10) In addition to the penalty that may be imposed under subsection (8), the Policy Planning Body may also :—

- (a) declare the admission made in respect of any or all seats in a particular professional educational institution to be invalid ;
- (b) recommend to the University or Statutory body concerned for withdrawal of affiliation or recognition, as the case may be, of such institution.

(11) The Policy Planning Body shall have the power to regulate its own procedure in all matters arising out of discharge of its functions, and shall, for the purpose of making any inquiry under this Ordinance, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any witness and examining him on oath ;
- (b) requiring the discovery and production of any document ; and
- (c) receiving evidence on affidavit and issuing commissions for the examination of witnesses and for local inspections .

(12) Any proceeding before such body shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code, 1860.

45 of 1860.

Prohibition
of
capitation
fee.

5. (1) No capitation fee shall be collected by a professional educational institution or by any person who is in charge of the management of such institution, from any candidate in consideration of his admission to or continuance in any course of study or his promotion to higher class in such institution under the management.

(2) Where the Policy Planning Body on receipt of any complaint or is otherwise satisfied that the management of such institution or any person who is in charge of the management of such institution has contravened the provisions of sub-section (1), the Body may, after making due enquiry in the manner prescribed, recommend to the Government for imposition of fine not exceeding ten lakhs against the management of such institution for such contravention.

Composi-
tion and
functions
of the Fee
Structure
Committee.

6. (1) The Government shall constitute a committee to be known as Fee Structure Committee for determination of fee for admission to the private professional educational institutions and sponsored institutions consisting of the following members nominated by it, namely :—

- (a) Vice Chancellor, BPUT, who shall be the Chairperson;
- (b) The Secretary to Government, Industries Department or his representative not below the rank of Deputy Secretary;
- (c) The Secretary to Government, Finance Department or his representative not below the rank of Deputy Secretary;

- (d) The Secretary to Government, Health and Family Welfare Department or his representative not below the rank of Deputy Secretary ;
- (e) The Secretary to Government, Higher Education Department or his representative not below the rank of Deputy Secretary;
- (f) A Chartered Accountant of repute nominated by the Government in consultation with the Chairperson ;
- (g) A representative of either All India Council for Technical Education or the Medical Council of India, as the case may be, depending on the course of study ;
- (h) Director, Medical Education and Training ; and
- (i) Director, Technical Education and Training, Orissa who shall be the Member-Secretary.

(2) The Chairperson of the Fee Structure Committee may co-opt two persons out of whom one must be having experience in the field of education.

(3) No person who is associated with any private professional educational institution shall be eligible for being a member of the Fee Structure Committee.

(4) A member of the Fee Structure Committee shall be removed if he does any act which, in the opinion of the Government, is unbecoming of a member of the Committee and the member so removed, shall not be re-nominated to the Committee:

Provided that no such member shall be removed from the Committee without being given an opportunity of being heard.

(5) The terms and conditions of service of the Chairperson and other Members of the Fee Structure Committee shall be such as may be prescribed.

(6) The Fee Structure Committee shall have the power to :—

- (a) require each private professional educational institution or sponsored institution to place before the Committee the proposed fee structure of such institution with all relevant documents and books of accounts for scrutiny well in advance

of the commencement of the academic year which shall not be later than the 31st January of the previous academic year ;

- (b) verify whether the fee proposed by each such institution is justified and it does not amount to profiteering or exploitative ;
and
- (c) approve the fee structure or determine some other fee which can be charged by the institutions.

Explanation—For the purpose of removal of doubt, it is declared that clause (a) shall apply to those sponsored institution, where there is provision for conducting certain courses on self-financing basis.

(7) The fee fixed by the Committee under sub-section (6) after Government approval, shall be binding on such institution for a period of three years and the candidate who is admitted to such institution in that academic year shall pay the said fee and it shall not be revised till completion of the course of such candidate in such institution.

(8) No such institution shall collect a fee amounting to more than one year's fee from a candidate in an academic year and collection of more than one year's fee in an academic year shall be construed as collection of capitation fee and such institution shall be liable to be proceeded against.

(9) The Fee Structure Committee shall have the power to regulate its own procedure for discharge of its functions, and shall, for the purpose of making any enquiry under this Ordinance, have all the powers of a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any witness and examining him on oath ;
- (b) requiring the discovery and production of any document ;
- (c) receiving evidence on affidavit ;
- (d) issuing commissions for the examination of witnesses and for local inspections ; and
- (e) any other matters which may be prescribed.

(10) Every proceeding before such Committee shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code, 1860. 45 of 1860.

Factors for
determina-
tion of fee.

7. (1) The Fee Structure Committee shall determine and fix the fee to be charged by private educational institutions and sponsored institutions taking into consideration the following factors, namely :—

- (a) the location of the professional educational institution ;
- (b) the nature of the professional course ;
- (c) the available infrastructure ;
- (d) age of the institution ;
- (e) the expenditure on administration and maintenance ;
- (f) reasonable surplus, if any, required for the growth and development of the institution ;
- (g) the additional funds, if any, generated from NRI for awarding freeship ; and
- (h) any other factors as the Committee may deem fit.

(2) The Fee Structure Committee may determine different fees in respect of different courses of professional education being offered at different institutions depending upon the facilities available and for this purpose it may place similarly placed institutions in broad groups :

Provided that the Fee Structure Committee may allow such institution to collect a higher rate of fee from NRI and the fee so collected over and above the fee determined for other students in that institution shall be utilized for awarding freeship.

Award of
freeship.

8. All professional educational institutions shall award freeship to such extent and in such manner and subject to such conditions as may be prescribed.

Reservation
of seats.

9. (1) In every professional educational institution admissions shall be in accordance with the reservation policy of the Government notified for the purpose of this Ordinance :

Provided that nothing in this sub-section shall be applicable to the minority institutions.

(2) In a private professional educational institution other than minority institution not exceeding fifteen per centum of the approved intake may be filled up by NRI from the merit list prepared on the basis of JEE.

(3) Where any shortfall in filling up of seats from NRI occurs, such vacant seats may be filled up from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be, conducted by Central Board of Secondary Education.

Provided that while filling up such vacant seats NRI shall be preferred.

(4) In a private professional educational institution fifteen per centum of the approved intake may be filled up strictly from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be, conducted by Central Board of Secondary Education.

(5) Where the seats remain unfilled due to non-availability of candidates in the list specified in sub-sections (3) and (4) or where student out of such lists leaves after selection to such seats, the same shall be filled up by the candidates belonging to the general category from the merit list of the JEE.

(6) Where seats for reserved category are left unfilled due to non-availability of candidates from a particular category in the list of JEE, such seats shall be filled up by candidates of same category from the merit list of All India Engineering Entrance Examination or All India Medical Entrance Examination, as the case may be, failing which such vacant seats shall be filled up by candidates not belonging to any reserved category in accordance with the merit list of JEE.

(7)(a) In a Minority institution, not less than fifty per centum of the approved intake shall be filled up by minority students from

within the State belonging to the minority community to which the institution belongs on the basis of inter-se merit in the merit list of the JEE.

- (b) The remaining seats shall be for the general category out of which up to fifteen per centum may be filled up by NRI.

Vacancy
not to
invalidate
the
proceedings.

10. No act or proceedings of the Policy Planning Body or the Fee Structure Committee shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or any defect in the constitution of such body or committee, as the case may be.

Invalidation
of
admission.

11. Any admission made in violation of the provisions of this Ordinance or the rules made thereunder shall be invalid.

Professional
Education
Fund.

12. (1) The Government, by notification in the official Gazette, shall constitute a fund to be called the "Professional Education Fund" along with the guidelines for its operation for providing freeship and scholarship to students of professional educational institutions and in such other activity as may be decided by the Government from time to time.

(2) The corpus of the fund shall be contribution from the Government, contribution from industries, alumni, donation and amount of fine levied under this Ordinance:

Provided that any alumni may assign the donation to be spent in a particular institution for any specific purpose for improvement of the quality of professional education.

(3) The fund shall be administered by an administrator appointed by the Government and the administration of the fund shall be in such manner as may be prescribed.

(4) The accounts of the fund shall be audited annually by the Accountant General of Orissa.

(5) The administrator shall, before such date, in such form and at such interval as may be prescribed, submit a report to the Government and the Government shall cause a copy of such report to be laid before the Orissa Legislative Assembly.

Protection
of action
taken in
good
faith.

13. No suit, prosecution or other legal proceedings shall lie against any member of the Policy Planning Body or Fee Structure Committee or any other officer of the Government for any thing which is in good faith done or intended to be done under this Ordinance and the rules made thereunder.

Power to
issue
directions.

14. (1) The Government may give such directions to any private professional educational institution as in its opinion are necessary or expedient for carrying out the purpose of this Ordinance or give effect to any of the provisions contained therein or in any rules or orders made thereunder and the management of such institution shall comply with every such direction.

(2) The Government may also give such directions to the officers or authorities under its control which in its opinion are necessary or expedient for carrying out the purpose of this Ordinance.

Penalties.

15. (1) Whoever contravenes the provisions of this Ordinance or the rules made thereunder shall, on conviction be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees ten lakh.

(2) A penalty under this section may be imposed without prejudice to the penalty specified in any other law for the time being in force.

Cognizance
of offence.

16. No court shall take cognizance of any offence punishable under this Ordinance except on a report in writing of the facts constituting such offence made by an officer authorized by the Government in this behalf by notification, published in the Gazette.

Power to
make
rules.

17. The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Ordinance.

Power to
remove
difficulties.

18. If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by order published in the gazette, make necessary provisions not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty :

Provided that every order issued under this section shall, as soon as may be after it is made, be laid before the Orissa Legislative Assembly.

The 2nd March, 2007

RAMESWAR THAKUR

Governor of Orissa

S. N. SAHOO

Special Secretary to Government